IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 376 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI DHULAJI HAKRAJI SALVI & 14 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
Ms. Anuja Nanavaty, Advocate for NANAVATI & NANAVATI for Applicant(s) : 1 - 15.
Mr.H.L.Jani, APP for Respondent(s) : 1,
MS JIRGA D JHAVERI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 24/03/2006

CAV JUDGMENT

1. Heard Ms.Anuja Nanavaty, learned Advocate for the petitioners, Mr.H.L.Jani, learned A.P.P. for

the respondet no.1-State and Mr.Jirga Jhaveri, learned Counsel for the respondent no.2.

2. Rule. Learned A.P.P.Mr. H.L.Jani waives service of rule on behalf of the respondent no.1-State while Ms. Jirga Jhaveri waives service of rule on behalf of the respondent no.2.

3. The present Special Criminal Application is directed against the order dated 31-12-2005 passed by the Judicial Magistrate, First Class, Vadodara, in Muddmal Application no.124 of 2005 as well as the order dated 20-1-2006 passed by the Sessions Court, Vadodara in Criminal Revision Application no.6 of 2006 dismissing the said Revision Application and confirming the order passed by the learned JM.F.C., Vadodara, rejecting the prayer for custody of the Muddamal bullocks intercepted and seized by the Waghodia Police at present kept at Bakrol Panjarapole.

4. It is the case of the petitioners that they are agriculturists using bullocks for cultivation of their land and during off season they are genuinely supplying the cattle to the local Co-operative Societies. It is the say of the petitioners that accordingly 213 bullocks were sent by them alongwith a caretaker from Rajasthan to be delivered to the Adivashi Piyat Co-operative Society in Gujarat through two Tempos bearing nos. GJ 6 U 6291 and GJ 1 UU 4593 and while on their way , the Wadhodia Police intercepted and seized the bullocks on an FIR No.298/2005 being filed by the local social workers on the allegation that the bullocks were being taken for slaughtering, and therefore, the petitioners have committed offences under Section 11 of the Prevention of Creulty to Animals Act, 1960, Section 5 and 6 of the Bombay Anial Prevention Act, 1954 and Section 123 and 177 of

the M.V.Act. Thereafter, the custody of the bullocks in questions were handed over to the Bakrol Panjarapole.

5. The present petitioners preferred an application no.124 of 2006 before the learned J.M.F.C., Vadodara, for custody of the Muddamal bullocks which came to be rejected as allegedly the bullocks in question were being transported from Rajasthan to Gujarat in the tempos in an unhygenic and cruel manner without any facilities of fodder and water and also on the ground that they were being taken for slaughtering. Being aggrieved by the said order of the Magistrate, the petitioners moved Misc. Revision Application no.6 of 2006 before the Sessions Court at Vadodara which also met with the same fate. These two orders are the subject matter of challenge in the present Special Criminal Application.

6. Learned Advocate Ms. Anuja Nanavaty for the petitioners has submitted that merely because the fodder and water were not present in the tempos carrying the bullocks in question it cannot be said that cruelty is committed so as to necessistate seizure on the presumption that the cattle were meant to be slaughtered. The learned Counsel also contended that even assuming that the offence of cruelty is committed this was the first offence. It is also the contention of the learned Counsel that a large number of bullocks have already died and that the Panjarapole authorities are not maintaining the bullocks properly. Considering all these aspects, the learned Counsel submitted that the petitioners being the owner of the bullocks would be the best persons to take care of the cattle during trial, and therefore, impugned orders deserve to be quashed and set aside.

7. On the other hand, the learned Counsel Ms.Jirga Jhaveri submitted that the respondent no.2-Panjarapole Sanstha, Bakrol, is in a better position to look after the bullocks in question as the institution has all the facilities required for the purpose. The learned Counsel also submitted that at the time of handing over custody to Panjarapole the bullocks were suffering from jaundice and that they were very weak, and therefore, the petitioners may be directed to pay the costs towards preservation and maintenacne of the bullocks in question. Mr. Jani learned A.P.P. for the State has adopted the submissions as canvassed by the learned Counsel for the respondent no.2. According to the learned Counsel for the respondents, the two orders under challenge are quite just and proper which does not warrant interference at the hands of this Court, and therefore, the present Special Criminal Application be dismissed.

8. Having considered the rival submissions, I am fully convinced with the arguments advanced by the leanred Counsel for the petitioners. I am fortified in my view by a catena of decisions rendered by this Court as also the Apex Court. Firstly, this Court in the decision dated 30th October, 1985/1st November, 1985 rendered in Special Criminal Application no.1971 of 1985 (Coram: M.B.Shah,J.) as his Lordship then was, in an identical set of facts interfered with the order of the lower Court and directed the Investigating Officer to deliver possession of the alive animals to the petitioner forthwith and the learned Magistrate was also directed to see that the possession of the animals was delivered to the petitioner immediately without fail on certain conditions. Secondly, reference can be had to the decision rendered in the case of Vadhwan Mahajan Panjarapole v. State of Gujarat &

Anr. ((2001 (1) G.L.H.662) as also the decision of the Hon'ble Apex Court in Manager, Panjarapole, Deodar & Anr. (1999 (1) G.L.R.587 (S.C.) wherein in a case where the offence has been committed for the first time,it was held that the custody of the Muddamal must be handed over to the petitioner if there was no material on record to show that the offence is being repeated. There is yet another decision in the case of MANAGER, PANJARAPOLE, DEODAR v. CHAKARAM MORAJI NAT & ANR. (1997 (2) G.L.H. 1321 wherein also it is observed that the interim custody of the seized animals must be handed over to the petitioner.

9. Coming now to the question whether the cost towards maintenance of the bullocks should be paid to the authorities of Panjarapole or not, I am of the view that it would be too premature to decided this question at this stage and the same has to be decided finally at the trial.

10. In view of what is discussed hereinabove, in light of the ratio laid down by the decisions of this Court as well as the Apex Court, the petitioners being the owner of the bullocks and they are facing the first prosecution, I am of the opinion that till the pending case in connection with CR no.I 298/05 is decided the custody of the Muddamal animals must be handed over to the petitioners since they have a better claim for the custody of the animals during prosecution and the present petition deserves to be allowed.

11. Accordingly, the application is allowed. The impugned order dated 31-12-2005 passed by the learned J.M.F.C., Vadodara, in Muddamal Application no.124 of 2005 as also the order dated 20-1-2006 passed by the learned Sessions Judge, Vadodara, in Criminal Revision Application

no.6 of 2006 confirming the order of the learned J.M.F.C. are hereby quashed and set aside. The interim custody of the remaining alive bullocks shall be handed over to the petitioners upon their furnishing all the particulars regarding such bullocks and also furnishing personal bond inter alia stating therein that the said bullocks shall be produced before the learned Magistrate as and when required. The petitioners shall also file a personal undertaking to the effect that they shall maintain the bullocks in a good and healthy condition. The petitioners are also directed to get the ears of the bullocks punctured for the purpose of identification. The trial Court is directed to give priority to the pending case in connection with CR no.I 298/2005 so as to conclude the proceedings as expeditiously as possible, preferably, within a period of three months from today. It would be open for the petitioners to take appropriate

legal remedy against the concerned responsible persons for the loss of bullocks, at an appropriate point of time.

Rule is made absolute in the aforesaid terms.

(M.D.Shah,J.)

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